

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

[illegible]

AND

<p>HILDA L. SOLIS, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,</p> <p>Plaintiff,</p> <p>v.</p> <p>JOHN J. KORESKO, V; et al</p> <p>Defendants.</p>	<p>NO. 2:09-CV-00988-CDJ</p> <p>HONORABLE C. DARNELL JONES, II</p>
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**FARMERS & MERCHANTS TRUST COMPANY OF CHAMBERSBURG'S
MOTION TO CONSOLIDATE**

NOW COMES, Farmers & Merchants Trust Company of Chambersburg,
successor by merger to Community Trust Company (“F&M Trust”), by and

through its attorneys, Rhoads & Sinon LLP, and for the reasons outlined in the accompanying Brief moves this Court to consolidate the above-captioned matters.

Respectfully submitted,

RHOADS & SINON LLP

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

FARMERS AND MERCHANTS TRUST COMPANY OF CHAMBERSBURG, Plaintiff, v. JOHN J. KORESKO, V; et al Defendants.	NO. 2:09-cv-5112-CDJ HONORABLE C. DARNELL JONES, II
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AND

HILDA L. SOLIS, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR, Plaintiff, v. JOHN J. KORESKO, V; et al Defendants.	NO. 2:09-CV-00988-CDJ HONORABLE C. DARNELL JONES, II
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BRIEF IN SUPPORT OF MOTION TO CONSOLIDATE

On or about March 18, 2002, Community Trust Company (“CTC”) became the trustee of the Regional Employers Assurance Leagues Voluntary Employees’ Beneficiary Association Plan and Trust (“REAL VEBA”), pursuant to that certain

Master Trust Agreement for the REAL VEBA (the “REAL VEBA Trust Agreement”). On or about December 30, 2002, CTC became the trustee of the Single Employer Welfare Benefit Plan and Trust (“SEWBPT”), pursuant to that certain Master Trust Agreement for the SEWBPT (the “SEWBPT Trust Agreement”). Effective November 29, 2008, F&M Trust acquired CTC by way of a merger transaction. F&M Trust is the successor by merger to CTC, and, prior to this Court’s January 14, 2010 Order which effectively removed F&M Trust as trustee, F&M Trust was the successor trustee to the REAL VEBA and SEWBPT. Under the Trust Agreements, F&M Trust was a directed trustee, and took direction from the Plan Administrator, currently PennMont.

The action docketed at Docket No. 2:09-cv-988 involves a claim brought by the Department of Labor alleging ERISA violations related to REAL VEBA and SEWBPT. As this Court knows, the interpretation of the REAL VEBA and SEWBPT Trust Agreements and other Plan documents is at the heart of the dispute. Likewise, and as outlined in F&M Trust’s Brief in Opposition to Defendants’ Motion to Dismiss the action pending at Docket No. 2:09-cv-5112, there remain certain issues for resolution regarding purported amendments to the Trust Agreements and Indemnification pursuant to those Agreements. F&M Trust’s Brief is incorporated herein by reference. In short, both actions arise from

the same factual background, involve the same parties and require the interpretation of the same documents.

“If actions before the court involve a common question of law or fact, the court may . . . consolidate the actions.” Fed. R. Civ. P. 42(a)(2). A district court has “broad discretion” to consolidate actions that meet the commonality requirement in order to promote judicial economy. V.A.L. Floors v. 1419 Tower, L.P., 2009 U.S. Dist. LEXIS 58298, *8 (E.D. Pa. July 9, 2009) (citing Ellerman Lines, Ltd. v. Atlantic & Gulf Stevedores, Inc., 339 F.2d 673, 675 (3d Cir. 1964)).

The above-referenced cases involve common questions of law and fact. As outlined in the pleadings and as developed during the hearings to date, both cases involve the administration of REAL VEBA and SEWBPT and the interpretation of the governing documents. Further, consolidation would promote judicial economy. Accordingly, consolidation of these actions is appropriate.

Respectfully submitted,

RHOADS & SINON LLP

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CERTIFICATE OF SERVICE

It is hereby certified that on January 28, 2010, the foregoing document was transmitted electronically to the Court for filing and for electronic service, upon the following:

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